

Tab 6

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<p>1 A. Being --</p> <p>2 Q. You are pointing to the original?</p> <p>3 A. The December, the original December 2005</p> <p>4 report.</p> <p>5 Q. Okay.</p> <p>6 A. Should the Court find differently as to</p> <p>7 what the reimbursement rate would be under</p> <p>8 Medicare and whether -- whether under -- under the</p> <p>9 law there -- there is no -- that the threshold of</p> <p>10 liability for those reimbursements are zero, that</p> <p>11 is something that, as I understand it, is a legal</p> <p>12 issue, and it is not for me as an economist to</p> <p>13 render an opinion. I can describe what the</p> <p>14 implications are from either of those.</p> <p>15 Q. Well, is it fair to say that your</p> <p>16 December 15 report is more conservative --</p> <p>17 MR. SOBOL: Objection to form.</p> <p>18 Q. -- than the supplemental report?</p> <p>19 MR. SOBOL: Objection to the form.</p> <p>20 A. It is certainly more conservative in</p> <p>21 that there are drugs for which damages occur in</p> <p>22 the supplemental report that do not occur in the</p>	<p>1 am --</p> <p>2 A. I know.</p> <p>3 Q. I am just asking for a concise, clear</p> <p>4 answer.</p> <p>5 MR. SOBOL: Why ask for any answer? It</p> <p>6 is right in his report.</p> <p>7 THE WITNESS: Yes.</p> <p>8 A. I want to point you to where it is --</p> <p>9 where you will get the complete, you know --</p> <p>10 certainly the description of the findings for a</p> <p>11 liability yardstick are first introduced in</p> <p>12 paragraph 22, and essentially what I'm talking --</p> <p>13 what I introduce there is I am going to look for</p> <p>14 comparator drugs, and I am going to look for a</p> <p>15 number of pieces of information that will allow me</p> <p>16 to draw conclusions for the levels of spread that</p> <p>17 manufacturers would use if they weren't using the</p> <p>18 spread to move market share in a way that was --</p> <p>19 that exceeded what the market understood them to</p> <p>20 be. And so I look at comparator drugs, and I</p> <p>21 indicate the drugs that I had asked for in table</p> <p>22 3.</p>
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<p>1 original December report. So it is conservative</p> <p>2 in that way.</p> <p>3 It is conservative also in the</p> <p>4 calculation of the ASP. It is a higher ASP, and</p> <p>5 so that filters through the analysis and what</p> <p>6 leads to lower damages.</p> <p>7 So certainly the December report is more</p> <p>8 conservative on a number of fronts in terms of</p> <p>9 damages and impact and causation.</p> <p>10 Q. Okay. I want to change the subject a</p> <p>11 little bit. Just so we're clear on this for the</p> <p>12 record, would you explain your methodology?</p> <p>13 MR. SOBOL: In what?</p> <p>14 Q. Your methodology for determining</p> <p>15 yardsticks?</p> <p>16 A. There are a variety of yardsticks</p> <p>17 included herein for damages and for liability. Can</p> <p>18 you be more specific or --</p> <p>19 Q. Well, I meant to encompass both.</p> <p>20 A. Oh, okay.</p> <p>21 Well, I think, just to --</p> <p>22 Q. And I'm not asking for a long answer. I</p>	<p>1 I have also looked at studies that have</p> <p>2 been done, survey work that has been done, which I</p> <p>3 mention in paragraph B of that paragraph, and this</p> <p>4 is the OIG report and the ASCO report, which</p> <p>5 indicate those liability thresholds.</p> <p>6 There are studies that have been done</p> <p>7 that reveal the preferences of payers and what</p> <p>8 they have negotiated with physician groups,</p> <p>9 provider groups that we see summarized in the</p> <p>10 Medpac report, which summarizes the Dyckman</p> <p>11 report, and also a report by the University of</p> <p>12 Chicago and NORC, so I look to those, those, that</p> <p>13 information to form the basis of what the</p> <p>14 yardstick for liability is and what the</p> <p>15 understanding is in the market for spreads for</p> <p>16 single-source physician-administered drugs and</p> <p>17 then for multi-source physician-administered</p> <p>18 drugs.</p> <p>19 And I expand on that later, which I</p> <p>20 won't go to the paragraphs. I will let you read</p> <p>21 those.</p> <p>22 Q. Well, why didn't you conclude that AWP</p>

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<p style="text-align: right;">Page 670</p> <p>1 should equal ASP?</p> <p>2 A. Because the industry knows that it</p> <p>3 doesn't.</p> <p>4 Q. Okay. Are you aware of the fact that in</p> <p>5 certain other cases that have been filed against</p> <p>6 these defendants, the plaintiffs are alleging that</p> <p>7 AWP should equal ASP?</p> <p>8 A. The -- you know, I don't know -- I would</p> <p>9 have -- you are asking me about cases that I</p> <p>10 haven't read the full Complaint. I don't know</p> <p>11 what the context is.</p> <p>12 You are also raising an issue where I'm</p> <p>13 not sure whether you are talking about a liability</p> <p>14 issue or you are talking about a damages issue.</p> <p>15 Certainly under Medicare, the reimbursement rate</p> <p>16 is to be the lesser of the ASP or some fraction of</p> <p>17 AWP.</p> <p>18 Now that doesn't mean that AWP should be</p> <p>19 equal to ASP, but under Medicare, it means that</p> <p>20 the reimbursement rate should have been at ASP.</p> <p>21 Now maybe some people interpret that to mean that</p> <p>22 the AWP should be at ASP, but that is not what I</p>	<p style="text-align: right;">Page 672</p> <p>1 that's quoting Mr. Young, that would imply that</p> <p>2 AWP is greater than ASP, and greater than WAC, and</p> <p>3 so I don't know what -- that is what is built into</p> <p>4 -- into my analysis here. That is my</p> <p>5 understanding of this market, and that's what is</p> <p>6 reflected in my yardsticks.</p> <p>7 Q. Well, you keep referring to a market</p> <p>8 understanding. Do you have any reason to believe</p> <p>9 that the government doesn't have the same</p> <p>10 understanding?</p> <p>11 A. The government has -- you need to be</p> <p>12 more -- well, let me answer this briefly.</p> <p>13 The government has set reimbursement</p> <p>14 rates that reflect an understanding that is</p> <p>15 comparable to what I would say is the -- in my</p> <p>16 yardsticks.</p> <p>17 Q. Well, leaving aside for the moment your</p> <p>18 yardstick, which I understand is based on your</p> <p>19 interpretation of a statute which we'll get to in</p> <p>20 a moment, what I want to focus on is --</p> <p>21 A. I am sorry?</p> <p>22 Q. -- what the government --</p>
<p style="text-align: right;">Page 671</p> <p>1 interpret.</p> <p>2 Q. Outside of the Medicare context, would</p> <p>3 you agree with me that to the extent that</p> <p>4 plaintiffs in other cases are alleging that AWP</p> <p>5 should equal ASP, that is simply incorrect?</p> <p>6 A. I -- I really can't comment on cases</p> <p>7 that I know nothing about. I mean --</p> <p>8 Q. It is inconsistent with what your</p> <p>9 understanding of the market expectation is;</p> <p>10 correct?</p> <p>11 A. Certainly for purposes of what I have</p> <p>12 done here and looking at market expectations,</p> <p>13 looking at the many deponents that Mr. Young</p> <p>14 cites, which I have summarized in attachment K</p> <p>15 here, and I have dealt with in my rebuttal</p> <p>16 reports, there is an understanding that AWP is a</p> <p>17 sticker price. And I mean this is more than just</p> <p>18 those deponents. It is anybody that writes about</p> <p>19 this market. And that there is an ASP that is</p> <p>20 below that that allows some margin to be earned by</p> <p>21 retail pharmacies for self-administered drugs or</p> <p>22 some retail margin to be earned by physicians, and</p>	<p style="text-align: right;">Page 673</p> <p>1 A. Which yardstick? My yardstick is not -</p> <p>2 - the yardstick for liability --</p> <p>3 MR. SOBOL: Let's not have a</p> <p>4 conversation here.</p> <p>5 THE WITNESS: Okay.</p> <p>6 MR. SOBOL: Let's have questions and</p> <p>7 answers.</p> <p>8 MR. EDWARDS: Now I have lost my train</p> <p>9 of thought.</p> <p>10 THE WITNESS: I am sorry. It was very</p> <p>11 rude of me.</p> <p>12 MR. SOBOL: Now there is more</p> <p>13 conversation.</p> <p>14 BY MR. EDWARDS:</p> <p>15 Q. You are not -- in terms of the market</p> <p>16 understanding of the difference between AWP and</p> <p>17 ASP, you are not saying that the government's</p> <p>18 understanding was any different from the</p> <p>19 understanding in the private sector, are you?</p> <p>20 A. I am saying that if anything with</p> <p>21 physician-administered drugs the private sector</p> <p>22 looked to Medicare and Medicare approaches to</p>

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